

Adopt Positions on Legislation Affecting Council Interests

Summary: This report includes descriptions of AB 1095 (Buchanan) and SB 1495 (Wolk).

AB 1095 (Buchanan) as amended 06/19/2012

Location: Senate Natural Resources and Water Committee

Hearing Date: July 3, 2012

REASON FOR THE BILL

The additional exemptions proposed in this bill would presumably assure state and local agencies operating in the Delta that specified activities cited in the bill would not be covered actions under state law.

DESCRIPTION

Current law, the Sacramento-San Joaquin Delta Reform Act of 2009 (Act), defines “covered action” as a plan, program, or project that may cause a direct or indirect change in the physical environment and that meets all of the following conditions:

- Will occur in whole or in part within the boundaries of the Delta or Suisun Marsh.
- Will be carried out, approved, or funded by the state or a local agency.
- Is covered by one or more provisions of the Delta Plan (Plan).
- Will significantly impact the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs.

The Act specifies seven conditions and situations that are not deemed to be covered actions. These include state regulatory actions, routine maintenance of the state and federal water projects, and routine maintenance and operation of any facility located in the Delta that is owned or operated by a local agency, among others.

The Act also requires public agencies to prepare a written certification of consistency containing findings that a covered action is, or is not, consistent with the Plan.

This bill would add the following as not being covered actions:

- Existing, fully permitted, habitat conservation and agricultural mitigation plans located in the Delta primary and secondary zones.
- Agricultural employee and low-income housing and infill residential projects as described in the CEQA statutes.
- All categorical exemptions cited in the CEQA statutes.

- Any upgrades to existing drinking water, storm water, or wastewater treatment facilities to meet state water quality standards.
- Any levee improvements and flood control projects in the Delta secondary zone consistent with state and/or federal standards and that comply with CEQA or the National Environmental Policy Act.

In addition, current law declares that projects in the Delta secondary zone, where a local agency has filed a notice of approval under CEQA before the Plan becomes effective, are not covered actions. This bill would additionally declare that an adopted general plan, sphere of influence, master plan, development agreement, subdivision map, or other land use permit that has received certification under CEQA, or which otherwise has vested rights as of the effective date of the Plan, is not a covered action.

Comment: Proper limits on covered actions already exist:

- Statutory criteria defining a covered action include several conditions, all of which must be met in order to determine that a plan, project, or program is a covered action. These conditions include the demonstration of significant impact on the coequal goals and coverage by one or more provisions of the Plan.
- Statutory exemptions include: projects completed before the Plan becomes effective, routine maintenance of local facilities, and regional transportation projects.
- Administrative exemptions are included in the Plan; i.e. certain projects that are exempt under CEQA, water transfers, and specified port activities.

There are several objectionable policy provisions in this bill:

- Placing into statute the broad exemptions proposed in this bill would require any future changes to the Plan to be done via legislation. This is hardly what the authors of the Act had in mind when it was drafted.
- This bill would exempt any project deemed by a local agency to be within the boundary of a general plan, sphere of influence, or master plan. This means that future expansion of these boundaries could include projects that will never be assessed for consistency with the coequal goals.
- Exempting water facility upgrades entirely means that, regardless of the scope and scale of any upgrade, an assessment as to whether the project is or is not consistent with the coequal goals, will not be done.
- The proposed statutory language for categorical exemptions lacks the qualifier "except in unusual circumstances" that is included in the Plan and thus would exempt from consistency review local government plan amendments made to conform to the land use and resource management plan adopted by the Delta

Protection Commission and small scale habitat restoration projects that are inconsistent with the Plan.

- The exemption of any levee improvement in the secondary zone would prevent the Council from coordinating flood control projects with water management and ecosystem restorations.

Because the Council will not complete and adopt the Plan until late 2012, and because the regulatory portions of the Plan will not take effect until the state rulemaking process is completed (early 2013), the consistency determination process will not begin until then. This bill is, therefore, premature.

STAFF RECOMMENDATION

Oppose.

SB 1495 (Wolk) as amended 04/16/2012

Location: Assembly Appropriations Committee

Hearing Date: June 27, 2012

SUMMARY

This bill would declare that specified leases and dredging activities are not covered actions.

REASON FOR THE BILL

The exemptions proposed in this bill would presumably assure the Port of Stockton that dredging and leasing operations would not be covered actions under state law.

DESCRIPTION

Current law, the Sacramento-San Joaquin Delta Reform Act of 2009 (Act), defines “covered action” as a plan, program, or project that may cause a direct or indirect change in the physical environment and that meets all of the following conditions:

- Will occur in whole or in part within the boundaries of the Delta or Suisun Marsh.
- Will be carried out, approved, or funded by the state or a local agency.
- Is covered by one or more provisions of the Plan.
- Will significantly impact the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs.

The Act also specifies seven conditions and situations that are not deemed to be covered actions. These include state regulatory actions, routine maintenance of the state and federal water projects, and routine maintenance and operation of any facility located in the Delta that is owned or operated by a local agency, among others.

This bill would add the following as not being covered actions:

- Leases approved by a special district where the use proposed by the lease meets applicable general plan and zoning ordinances, the uses proposed by the lease are approved by the city where the special district is located, and the special district has complied with CEQA requirements.
- Routine dredging activities necessary for facilities maintenance conducted by special districts formed under the state Harbors and Navigation Code.

Comment: This bill is sponsored by the Port of Stockton which is a special district formed under the Harbors and Navigation Code and conducts ongoing operations to remove silt from the Deep Water Shipping Channel and other nearby areas. Funding is provided by the US Army Corps of Engineers.

Chapter 2 of the draft Plan lists several administrative exemptions where the Council has determined that certain types of projects are not covered actions because they would not have a significant impact on achievement of the coequal goals or implementation of government-sponsored flood control programs. The proposed amendments included in this bill are nearly identical to language currently included in the final staff draft Delta Plan; therefore, this bill is unnecessary.

STAFF RECOMMENDATION

Oppose.

List of Attachments

Attachment 1: AB 1095
Attachment 2: Letter of Opposition to AB 1095
Attachment 3: SB 1495

Contact

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